

Subdivider: Apton Properties, LLC.

Project Name: Apton Plaza

File No.: 100.01.216

Private Job Account No.: 3144

Improvement Plan No.: 2-1067

Tract/Parcel Map No.: 9690

Council Approval Date: 8/15/06

Completion Period: 24 months

**CITY OF MILPITAS**

**SUBDIVISION IMPROVEMENT AGREEMENT**

THIS AGREEMENT, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2006, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and **Apton Properties, LLC.**

(hereafter referred to as "SUBDIVIDER"):

RECITALS

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a map filed with the City Council of the CITY, marked and designated **Tract No. 9690.**
- B. Said map shows certain streets and easements which are offered for dedication for public use.
- C. Pursuant to the terms of this agreement, SUBDIVIDER will complete certain improvements associated with the street dedications, including undergrounding existing utilities.
- D. CITY desires that certain utilities on roadways that are adjacent to but not within the map area be undergrounded ("the Additional Work") and believes that some efficiencies would be created if such work is completed in conjunction with the subdivision improvements.
- E. SUBDIVIDER is amenable to completing the Additional Work provided that the City reimburses the developer for such costs.

NOW, THEREFORE, in consideration of the mutual covenants terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

- 1. SUBDIVIDER agrees that it will construct at its sole cost and expense, all those certain improvements listed in the **Improvement Plan No. 2-1046**, consisting of 17 sheets and specifications approved by said City Council on 8/15/06, including setting survey monuments and identified by Project/Agency Fund Account No. 3144 (hereby referred to and made a part hereof the same as if set forth at length herein).
- 2. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have been submitted to the City Engineer and have been approved by him in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of CITY.

3. SUBDIVIDER agrees that said improvements will be constructed under and subject to the inspection of and to the satisfaction of the City Engineer.
4. SUBDIVIDER agrees that it will construct said improvements in accordance with the requirements set forth in said "Improvement Plans and Specifications" referred to above, all applicable ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.
5. All said improvements shall be completed and ready for final inspection by the City Engineer within 24 months of the date of execution of this Agreement or prior to City issuance of Occupancy Permit Final inspection of the last residential building, whichever occurs first. If SUBDIVIDER shall fail to complete the work required by this Agreement within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER.
6. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY as obligee in the penal sum of five hundred seventy six hundred dollars (\$576,000.00), conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder.
7. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this Agreement, SUBDIVIDER, agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court.
8. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum of five hundred seventy six hundred dollars (\$576,000.00), inuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.
9. SUBDIVIDER agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.
10. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
11. Prior to commencing any work, SUBDIVIDER, agrees to obtain an Encroachment Permit from the Engineering Division and at SUBDIVIDER's expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1000,000 for each person and \$1,000,000 for each occurrence and \$1000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY; its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of

SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay City the premium therefor.

12. SUBDIVIDER agrees that any general contractor engaged by the SUBDIVIDER for any work of improvement under this Agreement will have:

a) In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.

or

b) In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.

13. SUBDIVIDER agrees to indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof.

14. SUBDIVIDER agrees to comply with all special conditions and notes of approval for this development, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain Project/Private Job Account No. 3144 for this purpose with additional deposits as required by CITY.

A. Fees to be paid upon execution of this agreement:

a)	Plan-check and Inspection (Partial Deposit) (10% of Construction Costs Estimate)	(PJ3178-13-2500)	<u>\$57,600.00</u>
b)	Right-of-Way Reimbursement Fee	(310-3614-XXXX50)	<u>N/A</u>
c)	Other <u>Traffic Impact Fee</u>	(100-3718)	<u>\$17,844.00</u>
		<b>Sub-total</b>	<b>\$75,444.00</b>

B. Fees to be paid at the time of building permit issuance:

a)	Water Connection Fee (\$700 per acre + \$8 per front foot)	(402-3715)	<u>\$6,380.00</u>
b)	Potable Water Meter Fee (2x3", 1.5", 2x2" and 5/8")	(400-3662)	<u>\$4,868.62</u>
c)	Recycled Water Meter Fee	(406-3622)	<u>N/A</u>

d)	Sanitary Sewer Connection Fee (\$600 per acre + \$3 per front foot)	(452-3715)	<u>\$2,932.00</u>
e)	Sewer Treatment Plant Fee (\$690 per unit-does not include commercial)	(452-3714)	<u>\$64,170.00</u>
f)	Sewer Bypass Benefit Fund	(HA1320-2500)	<u>N/A</u>
g)	Permitting Automation Fee	(320-3712)	<u>\$9,838.79</u>
h)	Parksite Fee 1. Park Dedication In-Lieu Fee	(320-3712)	<u>\$297,357.00</u>
		<b>Sub-total</b>	<b>\$403,390.40</b>
		<b>Total</b>	<b>\$478,834.40</b>

15. Upon completion of the work and before City Initial Acceptance of the work thereof, SUBDIVIDER shall provide the City a complete original mylar of "Record Drawing" showing all the changes from the original plan.
16. Upon completion of the work, and before City Council final acceptance thereof, SUBDIVIDER shall be billed for and pay the outstanding balance of the project's private job account or shall be refunded the difference between the amount of City costs and expenses in each instance and the amount of said remittance.
17. Any easement or right-of-way necessary for the completion of any of the improvements required of SUBDIVIDER shall be acquired by SUBDIVIDER at its sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, SUBDIVIDER agrees that he will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by CITY in connection with said eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY. SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.
18. City will accept on behalf of the public, the dedication of the streets, and easements offered for dedication, and will supply water for sale to and within said subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this Agreement.
19. SUBDIVIDER hereby irrevocably offers to convey title of the water and sanitary sewer mains and lines, and appurtenances constructed in or for said subdivision to CITY. Upon final acceptance of said improvements by CITY, said title will be deemed to be accepted by CITY in the event that title has not previously passed to CITY by operation of law.
20. SUBDIVIDER agrees to comply with all requirements set forth on **Exhibit "A"** (attached hereto, hereby referred to and made a part hereof).
21. This Agreement shall be deemed to include any final conditions imposed by CITY upon the approval of the tentative and final maps related to public improvements of said subdivision.
22. SUBDIVIDER agrees that, upon ten (10) days written notice from CITY, it will immediately remedy, restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of

one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.

23. This Agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this Agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by SUBDIVIDER expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.
24. Nothing contained in this Agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.
25. Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

\*Signed and Sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

CITY OF MILPITAS

By: \_\_\_\_\_  
City Manager

\*\* Attach proper acknowledgment.

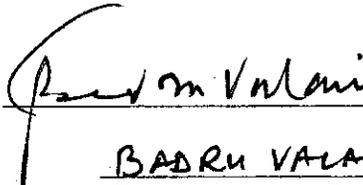
Apton Properties, LLC  
Subdivider

Managing Member  
Subdivider's Capacity

APPROVED AS TO FORM THIS

\_\_\_\_\_ day of \_\_\_\_\_, 2006

By: \_\_\_\_\_  
Assistant City Attorney

\*\*By:   
BADRU VALANI  
Typed Name and Capacity/Title

APPROVED AS TO SUFFICIENCY THIS

\_\_\_\_\_ day of \_\_\_\_\_, 2006

By: \_\_\_\_\_  
City Engineer

\*\*By: \_\_\_\_\_  
Typed Name and Capacity/Title

\* Date should be same as date on Page 1 of 6.

\*\* It is essential that the signatures be acknowledged before a California Notary Public and attach proper acknowledgment.

## **EXHIBIT "A"**

1. The Subdivider agrees to complete necessary Water Service Agreements, and pay the connection fees prior to Building Permit issuance.
2. The Subdivider agrees to pay to the City an in-lieu Park Fee of \$297,357, at the time of building permit issuance.
3. The Subdivider agrees to pay to the City a Traffic Impact Fee of \$17,844, upon execution of this Agreement.
4. The Subdivider agrees to complete the construction of all public improvements and settings of all Survey Monuments before the City issuance of the Occupancy Permit/Final Inspection of the last residential building.
5. The Subdivider agrees to execute a petition to annex and establish, with respect to the property, the Special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services, upon execution of this Agreement.
6. The Subdivider agrees to comply with the special conditions and notes of approval for this Subdivision.



